

* * *

Case No. 2:13-cv-02106-APG-PAL

ORDER TRANSFERRING CASE

STERLING CURRENCY GROUP, LLC, dba DINAR BANKER; TYSON RHAME and JANE DOE RHAME, husband and wife; FRANK BELL and JANE DOE BELL, husband and wife; JORDAN DOE and JANE DOE, husband and wife; MATTHEW ADAMS and JANE DOE ADAMS, husband and wife; MARK DILEO and JANE DOE DILEO, husband and wife; DOE DEFENDANTS I-X INCLUSIVE; and ROE DEFENDANTS I-X, INCLUSIVE,

Defendants.

I. BACKGROUND

Plaintiff Dinar Corp. Inc. (“Dinar Corp”) and defendant Sterling Currency Group, LLC (“Sterling”) are competitors in the online currency exchange industry. Plaintiffs Dinar Corp and Husam Tayeh (Dinar Corp’s president and sole shareholder) allege that Sterling, together with its

employees Tyson Rhame, Frank Bell, Jordan Doe, and Matthew Adams,¹ led an online “smear campaign” against Dinar Corp. Specifically, they allege the Defendants posed as customers and posted poor reviews and disparaging comments about Dinar Corp to a website called “dinarreview.com,” a site purporting to be a neutral platform where customers of online currency exchange companies can post reviews, comment about their experiences, and research companies’ reputations. Plaintiffs further allege that Sterling’s employees sent emails with false and disparaging information to two of Dinar Corp’s advertisers and a prospective client.

Plaintiffs’ lawsuit alleges defamation, business disparagement, false advertising and unfair competition under the Lanham Act, false light invasion of privacy, tortious interference with current and prospective business relationships, aiding and abetting, and conspiracy. (Dkt. #5.)² Defendants argue that they lack sufficient contacts with Nevada to justify the exercise of jurisdiction over them. Because Defendants have not purposefully availed themselves of the privileges and benefits of Nevada law, this Court lacks personal jurisdiction over them. However, rather than dismissing the lawsuit, the interest of justice favors transfer of the case to the Northern District of Georgia pursuant to 28 U.S.C. § 1406(a).

II. DISCUSSION

A. Legal Standard

A district court may exercise personal jurisdiction over a defendant only if (1) the jurisdiction is provided for by law, and (2) the exercise of jurisdiction comports with the constitutional guarantees of due process. *Greenspun v. Del E. Webb Corp.*, 634 F.2d 1204, 1207 (9th Cir. 1980). “Federal courts ordinarily follow state law in determining the bounds of their jurisdiction over persons.” *Daimler AG v. Bauman*, 134 S. Ct. 746, 753 (2014) (citing Fed. R. Civ. P. 4(k)(1)(A)). Under Nevada’s long-arm statute, a Nevada court “may exercise jurisdiction over a party to a civil action on any basis not inconsistent with the constitution of [Nevada] or the

¹ Plaintiffs also named the employees’ spouses as parties. I previously dismissed the action against Jane Doe, Jordan Doe, Jane Doe Adams, and Jane Doe Deniz pursuant to Fed. R. Civ. P. 4(m). (Doc. # 43). As the Complaint does not contain any specific allegations against Jane Doe Rhame, I dismiss the claims against her pursuant to Fed. R. Civ. P. 12(b)(6).

² Plaintiffs later stipulated to the dismissal of all claims against Tamer Deniz.

1 Constitution of the United States.” NRS § 14.065(1). Thus, “Nevada’s long-arm statute . . .
 2 reaches the limits of due process set by the United States Constitution.” *Baker v. Eighth Judicial*
 3 *Dist. Ct.*, 999 P.2d 1020, 1023 (Nev. 2000).

4 The constitutional touchstone for determining whether an exercise of personal jurisdiction
 5 comports with due process “remains whether the defendant purposefully established ‘minimum
 6 contacts’ in the forum State,” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985)
 7 (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)), such that “the maintenance of
 8 the suit does not offend traditional notions of fair play and substantial justice.” *Int’l Shoe*, 326
 9 U.S. at 316 (internal quotation omitted). Two categories of contacts can satisfy the requirements
 10 of due process. First, a court may exercise general jurisdiction over a defendant where the
 11 defendant’s contacts with the forum are so “‘continuous and systematic’ as to render [him]
 12 essentially at home in the forum state.” *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S.
 13 Ct. 2846, 2851 (2011) (quoting *Int’l Shoe*, 326 U.S. at 316). *See also Tuazon v. R.J. Reynolds*
 14 *Tobacco Co.*, 433 F.3d 1163, 1171 (9th Cir. 2006) (citing *Helicopteros Nacionales de Colombia,*
 15 *S.A. v. Hall*, 466 U.S. 408, 415 (1984)). Second, “if the defendant has ‘purposefully directed’ his
 16 activities at residents of the forum, and the litigation results from the alleged injuries that ‘arise
 17 out of or relate to’ those activities” the court may exercise specific jurisdiction over the
 18 defendant. *Burger King*, 471 U.S. at 472 (citations omitted). Under either category, “the
 19 defendant’s conduct and connection with the forum State must be such that he should reasonably
 20 anticipate being haled into court there.” *Id.* at 477–78. The “essential” inquiry is whether “the
 21 defendant purposefully avails itself of the privilege of conducting activities within the forum
 22 State, thus invoking the benefits and privileges of its laws.” *Id.* at 475.

23 Once “minimum contacts” have been established, the court considers those contacts “in
 24 light of other factors to determine whether the assertion of personal jurisdiction would comport
 25 with fair play and substantial justice.” *Id.* at 476. These factors are: (1) the burden on the
 26 defendant to litigate in the forum, (2) the forum state’s interest in adjudicating the dispute, (3) the
 27 plaintiff’s interest in obtaining convenient and effective relief, (4) the interstate judicial system’s
 28 interest in obtaining the most efficient resolution of controversies, and (5) the shared interest in

1 the states in furthering fundamental substantive social policies. *Id.* at 477 (citing *World-Wide*
 2 *Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980)). Additionally, a defendant who has
 3 purposefully directed his activities at a forum may defeat jurisdiction by presenting a “compelling
 4 case that the presence of some other considerations would render jurisdiction unreasonable.” *Id.*
 5 However, compelling cases “are limited to the rare situation in which the plaintiff’s interest and
 6 the state’s interest in adjudicating the dispute in the forum are so attenuated that they are clearly
 7 outweighed by the burden of subjecting the defendant to litigation within the forum.” *Patent*
 8 *Rights Prot. Group, LLC v. Video Gaming Techs., Inc.*, 603 F.3d 1364, 1369 (Fed. Cir. 2010)
 9 (citation omitted).

10 Finally, where a defendant moves to dismiss for lack of personal jurisdiction, the plaintiff
 11 bears the burden of demonstrating that the court’s exercise of jurisdiction over the defendant
 12 would be appropriate. *Sher v. Johnson*, 911 F.2d 1357, 1361 (9th Cir. 1990). Where the motion is
 13 based on written materials, “the plaintiff need only make a prima facie showing of jurisdictional
 14 facts.” *Id.* In doing so, however, the plaintiff may not “simply rest on the bare allegations of [his]
 15 complaint.” *Amba Mktg Sys., Inc. v. Jobar Int’l, Inc.*, 551 F.2d 784, 787 (9th Cir. 1977). But any
 16 uncontroverted allegations in the complaint must be taken as true and any conflicts between
 17 statements contained in affidavits must be resolved in the plaintiff’s favor. *AT&T v. Compagnie*
 18 *Bruxelles Lambert*, 94 F.3d 586, 588 (9th Cir. 1996).

19 **B. Analysis**

20 Defendants do not challenge any of the jurisdictional allegations in the Complaint, but
 21 rather assert that those allegations are insufficient to demonstrate the court’s jurisdiction.
 22 Consequently, I will presume Plaintiffs’ jurisdictional facts to be true.

23 According to the Complaint, Defendants’ contacts with Nevada are minimal. Sterling is a
 24 Georgia limited liability company with its principal place of business in Georgia. The other
 25 moving defendants are residents of Georgia. Plaintiffs allege that (1) Defendants’ purported
 26 actions were done with the knowledge and intention that Plaintiffs would suffer harm in Nevada;
 27 (2) Defendants “did things and caused things to happen” in Nevada; (3) Defendants directed
 28

1 “defamatory statements” about Plaintiffs to Nevada residents; and (4) Defendants “conspired with
2 each other, and encouraged and assisted others, to defame Plaintiffs and cause harm to Plaintiffs”
3 in Nevada. (Doc. # 1 at 12-13, ¶¶ 20-23.)

4 There are no grounds for the exercise of general jurisdiction. Although Plaintiffs note that
5 Sterling has prosecuted an action in Nevada courts and defendant Rhame owns other Nevada
6 corporations, this is insufficient to show that Defendants are “at home” in Nevada. *Daimler*, 134
7 S. Ct. at 757. Quite the contrary, the allegations in the Complaint establish that Sterling’s
8 operations and employees are “at home” in Georgia. In fact, as alleged in the Complaint, the only
9 contact of any significance Defendants have with Nevada is vis-à-vis the alleged attacks on Dinar
10 Corp. Consequently, the exercise of general personal jurisdiction is inappropriate.

11 Thus, specific jurisdiction must exist in order to maintain this lawsuit in this Court. To
12 establish specific jurisdiction, Plaintiffs must show that (1) Defendants performed some act or
13 consummated some transaction with Nevada or otherwise purposefully availed themselves of the
14 privileges of conducting activities in Nevada, (2) Plaintiffs’ claims arise out of or result from that
15 Nevada-related activity, and (3) the exercise of jurisdiction would be reasonable. *See Bancroft &*
16 *Masters, Inc. v. Augusta Nat’l Inc.*, 223 F.3d 1082, 1087 (9th Cir. 2000).

17 To determine purposeful availment in the context of alleged tortious internet conduct,
18 courts are to inquire whether a defendant “purposefully directed his activities” at the forum state,
19 applying the “effects” test based on the Supreme Court’s decision in *Calder v. Jones*, 465 U.S.
20 783 (1984). *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1228 (9th Cir. 2011). This
21 “effects test” requires that “the defendant allegedly must have (1) committed an intentional act,
22 (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be
23 suffered in the forum state.” *Brayton Purcell LLP v. Recordon & Recordon*, 606 F.3d 1124, 1128
24 (9th Cir. 2010) (quoting *Yahoo! Inc. v. La Ligue Contre Le Racisme Et L’Antisemitisme*, 433 F.3d
25 1199, 1206 (9th Cir. 2006)).

26 As to the first prong, there is no question that Defendants’ alleged acts were intentional.
27 Posting information on a website constitutes an intentional act. *See Mavrix Photo*, 647 F.3d at
28

1 1229. The allegation that Defendants posed as Dinar Corp customers and posted poor online
2 reviews and comments is sufficient to satisfy the first prong of the “effects” test.

3 Similarly, as to the third prong, Plaintiffs’ allegations are sufficient to show that
4 Defendants were aware that the harm of their alleged acts was likely to be suffered in the forum
5 state. This prong is satisfied “when defendant’s intentional act has ‘foreseeable effects’ in the
6 forum.” *Brayton Purcell*, 606 F.3d at 1131 (citing *Bancroft*, 223 F.3d at 1087). This does not
7 require the “brunt” of the harm to be suffered in the forum, but rather that some harm is
8 foreseeable. *Id.* Here, Plaintiffs allege that Defendants knew Dinar Corp was incorporated in
9 Nevada and, consequently, harm in Nevada was a foreseeable effect of Defendants’ actions.
10 Although the place of incorporation is not necessarily the location of a corporation’s harm (*see*
11 *Dole Food Co., Inc. v. Watts*, 303 F.3d 1104, 1113 (9th Cir. 2002)), Plaintiffs have made a prima
12 facie showing that Defendants’ posting of fake reviews and negative comments had a foreseeable
13 effect in Nevada.

14 However, as to the second prong, I find that Defendants did not expressly aim their
15 conduct at Nevada. Although Defendants posted the comments and reviews on a website
16 accessible in Nevada, “something more” is required to constitute an express aim. *See Cybersell*
17 *Inc. v. Cybersell, Inc.*, 130 F.3d 414, 418 (9th Cir. 1997). In assessing “something more,” the
18 Ninth Circuit has examined “several factors, including the interactivity of the website . . . the
19 geographic scope of defendant’s commercial ambitions . . . and whether the defendant
20 individually targeted a plaintiff known to be a forum resident.” *Mavrix Photo*, 647 F.3d at 1229
21 (citations and quotations omitted).

22 Both the website and Defendants’ use of it were passive. Websites that contain no more
23 interactivity than the allowance of users to post information are considered passive. *See Medinah*
24 *Mining, Inc. v. Amunategui*, 237 F. Supp. 2d 1132, 1135 (D. Nev. 2002) (citing *Zippo Mfg. Co. v.*
25 *Zippo Dot Com, Inc.*, 952 F. Supp. 1119, 1124 (W.D. Pa. 1997)). Here, dinarreview.com does
26 not have the capability to facilitate transactions or create contracts. Rather, the site merely offers
27 a forum for customers to post information relating to various service providers. Moreover,
28

1 although Defendants' use of the website was done with the alleged intent to drive potential
2 customers to its site and services, a commercial purpose accompanying a web post is insufficient
3 to constitute "something more." *Id.* at 1135-36. Indeed, even a posted advertisement is
4 considered passive information. *See Cybersell*, 130 F.3d at 420.

5 Additionally, the geographic scope of Defendants' alleged activity was not targeted at
6 Nevada. Defendants' negative reviews were equally aimed at potential customers in all 50 states
7 and around the world. Although Dinar Corp may have a higher concentration of customers in
8 Nevada,³ Dinar Corp has not specifically alleged any facts demonstrating that Defendants' acts or
9 intentions were targeted at Dinar Corp's Nevada-based customers. *Compare Pebble Beach Co. v.*
10 *Caddy*, 453 F.3d 1151, 1158 (9th Cir. 2006) (awareness of the possible effects of a non-
11 interactive advertisement was insufficient to constitute express aim) *with Rio Properties, Inc. v.*
12 *Rio Int'l Interlink*, 284 F.3d 1007, 1021 (9th Cir. 2002) (holding a general accessible website
13 together with a marketing campaign in Nevada to be sufficient to create personal jurisdiction).
14 *See also Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004) (Ohio car
15 dealership's print advertisement appropriating image of Arnold Schwarzenegger was insufficient
16 to create jurisdiction in California, where Schwarzenegger resided, because the scope of the local
17 advertisement was expressly aimed at Ohio.).

18 In contrast, the allegations in the Complaint demonstrate that Defendants individually
19 targeted Plaintiffs. The intent of the defendant is what courts focus on regarding the
20 individualized targeting factor. For example, in *Panavision Int'l v. Toeppen*, 141 F.3d 1316,
21 1318-19 (9th Cir. 1998), the Ninth Circuit affirmed the district court's finding of personal
22 jurisdiction where a cybersquatter registered a website using plaintiff's name, then attempted to
23 extort payment from plaintiff to relinquish the site. Conversely, in *Pebble Beach Co.*, 453 F.3d at
24 1153-54, 1158, no personal jurisdiction existed over the owner of a Pebble Beach bed and
25 breakfast for his registration and use of the website www.pebblebeach-uk.com, even though he
26

27 ³ Plaintiffs assert that "a majority of [Dinar Corp's] customers (10%) are located in Nevada."
28 (Doc. # 9, p. 11.) It is unclear how 10% constitutes a majority, but I will assume that more of
Dinar Corp customers live in Nevada than in any other state.

1 was aware of the well-known golf course of the same name. Here, Plaintiffs allege that
2 Defendants posted the reviews and comments with the express intent to harm Dinar Corp. Thus,
3 its online activity was not legitimate as in *Pebble Beach*, but rather intended to cause harm to
4 Plaintiffs as in *Panavision*. The Defendants individually targeted Plaintiffs.

5 Weighing all the factors, Defendants' actions do not constitute the "something more"
6 needed to show that those actions were expressly aimed at Nevada. It is well established that a
7 "foreign act with foreseeable effects in the forum state" is insufficient to constitute the
8 "something more" necessary to show purposeful availment. *Bancroft*, 223 F.3d at 1087.
9 Moreover, the cases finding "something more" focus on actions targeted at the forum taken in
10 addition to the online activity. *See, e.g., id.* at 1088 (letter sent to plaintiff requiring it to sue or
11 lose its domain name); *Panovision*, 141 F.3d at 1318-19 (cybersquatter's letter to plaintiff
12 extorting payment for website); *Rio*, 284 F.3d at 1021 (print and radio advertisements of website
13 within the forum). Here, although Defendants allegedly contacted Dinar Corp's advertisers and a
14 customer in addition to their online activity, there are no allegations that the advertisers or the
15 customer were Nevada residents or that these actions were targeted at Nevada in any way.
16 Ultimately, the thrust of Plaintiffs' argument is that Defendants' actions were expressly aimed at
17 Nevada because Defendants knew Dinar Corp was incorporated in Nevada and consequently
18 Defendants should have foreseen harm in Nevada. As such, Plaintiffs' arguments "focus too
19 much on the effects prong and not enough on the 'something more' requirement." *Pebble Beach*,
20 453 F.3d at 1159. Although Plaintiffs' allegations establish the first and third prongs of the
21 "effects" test, they are insufficient to show the "something more" necessary to establish the
22 second, "expressly aimed," prong. Plaintiffs have failed to make a prima facie showing of
23 personal jurisdiction.

24 In their Opposition to the motion, Plaintiffs request that, in the event I find there to be no
25 personal jurisdiction, I transfer venue to the United States District Court for the Northern District
26 of Georgia pursuant to 29 U.S.C. § 1404(a). Defendants express no opposition to transfer. A
27 court "may transfer venue under either § 1404(a) or § 1406(a) without regard to whether it has
28

1 personal jurisdiction over” a defendant. *Kawamoto v. CB Richard Ellis, Inc.*, 225 F. Supp. 2d
2 1209, 1211 (D. Haw. 2002) (citing *Goldlawr, Inc. v. Heiman*, 369 U.S. 463 (1962)). As venue is
3 improper in the District of Nevada, any transfer must be pursuant to § 1406(a). *See id.* at 1212,
4 1214. Under § 1406(a) a district court may, “if it be in the interest of justice, transfer [a] case to
5 any district or division in which it could have been brought.” Because Defendants reside in
6 Atlanta, courts in Georgia may exercise personal jurisdiction over them and the case could have
7 been brought in the Northern District of Georgia. If this case were dismissed, Plaintiffs’ claims
8 may be barred by the applicable statute of limitations. Thus, rather than dismiss the action, the
9 interests of justice are better served by transferring venue. Consequently, I transfer this case to
10 the United States District Court for the Northern District of Georgia pursuant to 28 U.S.C. §
11 1406(a).

12 **III. CONCLUSION**

13 IT IS THEREFORE ORDERED that Defendants’ Motion to Dismiss (Doc. # 4) is
14 DENIED. However, the Clerk of the Court is instructed to transfer this case to the United States
15 District Court for the Northern District of Georgia.

16 DATED THIS 15th day of August 2014.



18 ANDREW P. GORDON
19 UNITED STATES DISTRICT JUDGE
20
21
22
23
24
25
26
27
28